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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/889,320	01/10/2002	Lars Jansson	YAMAH5.523APC	2320

20995 7590 06/22/2005

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IRVINE, CA 92614

EXAMINER
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VANAMAN, FRANK BENNETT

ART UNIT	PAPER NUMBER
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3618

DATE MAILED: 06/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/889,320

Applicant(s)

JANSSON ET AL.

Examiner

Frank Vanaman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 April 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 23-34, 36-42 and 55-59 is/are pending in the application.
- 4a) Of the above claim(s) 25-29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 23, 24, 30-34, 36-42, 55-59 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **Continued Examination Under 37 CFR 1.114**

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 9, 2005 has been entered.

### **Status of application**

2. Claims 23-34, 36-42, 55-59 are pending, claims 25-29 being withdrawn from consideration.

### **Claim Rejections - 35 USC § 102**

3. The appropriate citation of 35 U.S.C. 102 relied upon herein may be found in the previous office action.

4. Claims 23, 24, 36, 39, 41, 55-57 and 59 are rejected under 35 U.S.C. 102(b) as being anticipated by Ohshita et al. (US 5,873,428). Ohshita et al. teach a vehicle having at least a front and rear wheel, with a frame supporting an engine (23), the front wheel (11) and rear wheel (17), the front wheel connected by a fork (19), the vehicle including a drive system wherein a hydraulic drive is provided for the front wheel-- including a pump (31), a motor (36), an accumulator (42), and connecting piping, the pump driven by the engine (24, 32, 33, 34, 35) the motor configured to drive the wheel (37, 38, 39, 41) with the accumulator providing a system pressure; the system having supply (43) and return (45) passages, with the accumulator and a filter (49) located in the return passage; the drive including a valve (47) which allows the wheel to be driven or to free-wheel (at which time it may run at any desired speed compared to the rear wheel since there is no drive connection to the front wheel in this condition), the wheel including a wheel shaft (63) mounted on the fork (19a, 19b) a cover (66) fixed with respect to the fork and providing an aperture in which the motor is mounted (e.g., at 68) wherein a portion of the motor output shaft (37) which extends back into the motor, extends through the aperture; the wheel having an internal gear (39) the motor output shaft having a mating gear (38) which engages the internal gear; the internal hub portion of

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the wheel (proximate 59) having a generally cylindrical shape with a closed end (to the left in figure 6) and an opposite end which is closed by the cover (66) and is near the closed end, to the breadth claimed, the cover having at least a flange portion (note section, figure 6) extending inwardly of the outer periphery of the wheel hub, including a sealing arrangement (67) which is also positioned so as to not extend beyond the outer periphery of the hub (and thus disposed inwardly from the open end to the breadth claimed), the wheel being supported on the shaft by two bearing assemblies (not referenced, note figure 6).

### **Claim Rejections - 35 USC § 103**

5. The appropriate citation of 35 U.S.C. 103 relied upon herein may be found in the previous office action.

6. Claims 33, 34, 37, 38, 40 and 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ohshita et al. (Cited above). The reference to Ohshita et al. is discussed in detail above. As regards claims 33 and 34, the reference fails to specifically teach the use of either a bladder accumulator or a piston accumulator. Inasmuch as both types of accumulator are well known and interchangeable, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the accumulator taught by Ohshita et al. as either a piston accumulator or a bladder accumulator for the purpose of using a commonly available type of accumulator, for example the bladder accumulator in order to reduce weight overall, or the piston accumulator in order to avoid the additionally required poppet valve needed for the proper operation of a bladder accumulator.

As regards claim 37, the reference to Ohshita et al. fails to specifically teach a labyrinth seal on the peripheral surface of the cover, however in that a labyrinth seal is well known for assisting in the minimization of flow without providing further frictional rubbing between relatively moving parts, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide a labyrinth seal on the cover in addition to the taught seal in order to provide a small further reduction in the material which may leak into the inner portion of the hub.

As regards claim 38, the reference to Ohshita et al. fails to specifically teach that a portion of the shaft extends through the aperture from the motor to the gear. In that it is well known to make elements with moving parts accessible for repair, it would have been obvious to one of ordinary skill in the art at the time of the invention to mount the entire motor portion (36) externally of the cover (66) so as to facilitate easy repair of the motor without the need to disassemble the rest of the wheel mechanism.

As regards claim 40, the reference to Ohshita et al. fails to specifically teach both a needle bearing and a ball bearing. In that both needle and ball bearing are equally well known, and wherein a radial distance taken up by a needle bearing is reduced from that of a ball bearing, it is not considered to be beyond the skill of the ordinary practitioner to replace one of the ball bearings (e.g., the set closer to plate 66) with a needle bearing, for the purpose of increasing the free space inside the wheel hub area near the mounting of the closure plate, facilitating easier maintenance.

As regards claim 58, the reference to Ohshita et al. fails to teach the disk of the cover as being disposed in the recess of the hub. It is well known in the manufacturing arts to recess an element in order to provide a more compact arrangement, and as such, it would have been obvious to one of ordinary skill in the art at the time of the invention to recess the disk portion of the cover (66) within the periphery of the hub (e.g., such that the outer face of cover 66 is laterally inward of the outer end of the hub, proximate 67) for the purpose of providing a more compact wheel profile, reducing the volume the central portion occupies.

7. Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ohshita et al. in view of Taig (US 5,328,002). The reference to Ohshita is discussed above and fails to teach that the system includes a housing, wherein the filter and accumulator are contained in the housing. Taig teaches a hydraulic supply system for a vehicle system wherein an accumulator (30) is provided in the same housing as a filter (190). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the filter and accumulator taught by Ohshita in the same housing as taught by Taig, for the purpose of incorporating both elements (with particular noting that Ohshita's filter and accumulator are located one after the other in circuit) in a single

enclosure, thus reducing the number of mounting elements needed to attach the system to the vehicle.

8. Claims 31 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ohshita et al. in view of Taig and Bedenbender et al. (US 3,929,206). The references to Ohshita et al. and Taig are discussed above and fail to teach the arrangement of the accumulator and filter such that longitudinal axes of each are substantially parallel. Bedenbender teaches an arrangement wherein a filter (256) and a set of accumulators (264, 266, 268) are arranged side-by side (figure 8a, figure 9) having their respective longitudinal axes parallel to one another. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the arrangement of accumulator and filter of the vehicle of Ohshita et al. as modified by Taig, such that longitudinal axes of both elements are parallel, for the purpose of reducing space in the mounted assembly.

As regards claim 32, the examiner takes official notice that the use of an exhaust pipe and muffler for an internal combustion engine on a land vehicle is very well known, and considered to be an inherent portion of the vehicle if taught to include an internal combustion engine. As regards the locating of the housing with the accumulator and filter proximate the muffler, it would have been obvious to one of ordinary skill in the art at the time of the invention to locate the accumulator and filter housing proximate a muffler (for example under a seat portion of the vehicle), for the purpose of allowing the housing to be placed in an otherwise unused space in the vehicle.

9. Claim 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ohshita et al. in view of Heible (US 5,894,903). The reference to Ohshita is discussed above and fails to teach the system as configured to drive the front wheel at a speed less than that of the rear wheel. Heible teaches a hydraulic drive for a motorcycle wherein the front wheel is driven when the rear wheel runs in a range of 1% to 3% faster than the front wheel (col. 3, lines 32-42). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the drive system of the vehicle of Ohshita with the control for driving the front wheel when the rear wheel speed is greater, for the purpose of controlling the engagement of drive to the front wheel.

### **Response to Comments**

10. Applicant's comments filed with the amendment have been carefully considered. Applicant has argued that the reference to Oshita et al. fails to teach the provision of the cover and sealing arrangement as being 'near' the closed end. The examiner notes, however, that there is no specificity associated with the term 'near' which has been actually recited in the claims, which would serve to define beyond the reference. The open end is 'near' the closed end to the breadth claimed, for example as compared to a portion of the vehicle which is more remote. The examiner notes that applicant may be suggesting a more narrow interpretation of the term 'near' than is actually positively recited, and it is not appropriate for an examiner to read unclaimed limitations into the claims.

From MPEP 2111:

During patent examination, the pending claims must be given their broadest reasonable interpretation consistent with the specification. In re Hyatt, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000). Applicant always has the opportunity to amend the claims during prosecution, and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. In re Prater, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969) The court explained that "reading a claim in light of the specification, to thereby interpret limitations explicitly recited in the claim, is a quite different thing from 'reading limitations of the specification into a claim,' to thereby narrow the scope of the claim by implicitly adding disclosed limitations which have no express basis in the claim." The court found that applicant was advocating the latter, i.e., the impermissible importation of subject matter from the specification into the claim.). See also In re Morris, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997).

### **Conclusion**

1. Any inquiry specifically concerning this communication or earlier communications from the examiner should be directed to F. Vanaman whose telephone number is 571-272-6701.

Any inquiries of a general nature or relating to the status of this application may be made through either Private PAIR or Public PAIR. Status information for

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unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A response to this action should be mailed to:

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P. O. Box 1450  
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Or faxed to one of the following fax servers:

Regular Communications/Amendments: 703-872-9326  
After Final Amendments: 703-872-9327  
Customer Service Communications: 703-872-9325

**F. VANAMAN**  
**Primary Examiner**  
**Art Unit 3618**



6/20/05